Annual Report of the Saskatchewan Conflict of Interest Commissioner

2004

105-06545/

Saskatchewan
Conflict of Interest
Commissioner

SASKATCHEWAN

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July 11, 2005.

The Honourable Myron Kowalsky,
Speaker of the Legislative Assembly
of Saskatchewan,
Room 129 Legislative Building,
Regina, Saskatchewan.
S4S 0B3

Dear Mister Speaker:

I have the pleasure and honour to present to you the Annual Report of the Office of the Conflict of Interest Commissioner for the period of January 1, 2004 to December 31, 2004.

This Report is submitted pursuant to Section 25 of *The Members' Conflict of Interest Act*, Chapter M-11.11, Statutes of Saskatchewan, 1993.

Yours respectfully

G. L. GERRAND, Q.C.
Commissioner

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ANNUAL REPORT

To the Legislative Assembly
For the Year Ending 2004

INTRODUCTION

Twelve years ago, the Saskatchewan Legislature unanimously resolved that Members of the Legislature must avoid conflicts of interest while serving as elected representatives of the people of Saskatchewan. In 1993, *The Members' Conflict of Interest Act* was passed, the provisions of which require Members of the Legislative Assembly to perform their duties of office and arrange their private affairs in a manner that promotes the confidence of the public in each Member and maintains the dignity of the Assembly.

The responsibility under *The Members' Conflict of Interest Act* for avoiding conflicts of interest is that of the Member. As Conflict of Interest Commissioner, I can assist each Member in avoiding breaches of the *Act* but the ultimate responsibility for doing so rests statutorily on the individual Member.

My assistance to Members in their observance of the requirements of the *Act* is provided in several ways.

1. Disclosure to me of business, property and money matters

Section 11(1), (2) and (3) of the *Act* provides as follows:

> "11(1) Every member shall file with the commissioner a disclosure statement in the form prescribed by the regulations.
>
> (2) The disclosure statement mentioned in subsection (1) shall be filed:
>
> (a) in the case of a member who is in office when this section comes into force, within 90 days of this section coming into force;
>
> (b) in the case of a member who is elected, within 90 days of being elected.
>
> (3) After filing a disclosure statement in accordance with subsection (2), the member shall file a disclosure statement annually, but not later than March 31 in each year."

By providing me with the detailed information of his or her business, property and money matters, I am in a position to advise a Member if any proposed legislative or administrative act that the Member contemplates in the carrying out of his or her responsibilities is an accord with the provisions of the *Act*. With some specific exceptions, the information give to me in the Disclosure Statement is confidential, for my purposes only.

A general election having been held on November 5, 2003, the obligation of Members was to file with me their Disclosure Statement within 90 days or by February 3, 2004. Regrettably, some Members did not file their Disclosure Statements with me in a timely manner.

2. Consulting with me annually

Section 11(5) of the Act provides as follows:

> "(5) After filing a disclosure statement pursuant to this section, the member, and the member's spouse if available, shall consult with the commissioner:

> (a) to ensure that adequate disclosure has been made; or
>
> (b) to obtain advice and direction on the member's obligations under this Act."

Each Member consulted with me in a timely fashion during the first six months of 2004. At these meetings, I was able to review with each Member his or her Private Disclosure Statement and have the Member correct any deficiencies I had discerned in the Statement. The meeting with each Member is also an opportunity to answer any question a Member may have as to the Member's obligations under the *Act* and to provide advice respecting compliance.

3. Commissioner's Opinion and Advice

Section 27(1) of the *Act* provides:

> "27(1) A member may request that the commissioner give an opinion and recommendation on any matter respecting the obligations of the member under this Act."

Through the course of the year, Members consult me respecting a variety of concerns. 2004 was no exception. I provide advice as to how a Member can comply with the provisions of the *Act*, situations to be avoided and in some cases, a recommendation that a Member recuse himself or herself from a specific legislative or administration act as provided by Section 10 of the *Act*.

Aside from missed time requirements for the filing of Disclosure Statements by some Members, there were no breaches of *The Members' Conflict of Interest Act* in 2004 brought to my attention and I am satisfied that all Members observed the provisions of the *Act* other than timing requirements. All Members continue to display a genuine desire to avoid any conflict between their duties as legislators and the Member's

private interest and they have successfully done so since my appointment as Commissioner.

REQUEST FOR OPINION PURSUANT TO SECTION 32(2)

Several requests were made to me to provide an opinion pursuant to Section 32(2) which states as follows:

> "32(2) The President of the Executive Council may request that the commissioner give an opinion on any matter that relates to the conduct of a member of the Executive Council and that is in addition to the compliance of the member of the Executive Council with the provisions of this Act."

Each request was responded to by way of an opinion as provided by Section 33(6) which states as follows:

> "33(6) Where the request for an opinion is made under subsection 32(2), the commissioner shall report his or her opinion to the President of the Executive Council."

OPINION PURSUANT TO SECTION 27

In November of 2004, I was requested by the Honourable Pat Atkinson in her capacity as Chair of the Cabinet Committee on Planning and Priorities to provide an opinion as to whether Members of Executive Council would be in breach of any of the provisions of *The Members' Conflict of Act* in the following circumstances, then being contemplated by Executive Council.

Prior to the request for an opinion, the Government of Saskatchewan had announced that it would provide the citizens of Saskatchewan with an education property tax relief program of 55 million dollars a year for two years. The Cabinet Committee chaired by Minister Atkinson intended to develop a recommendation for the precise program and

governing rules for the distribution of this large amount of money to citizens of Saskatchewan who were owners of property, which recommendations would go forward to Executive Council for further action. Each of the members of the Cabinet Committee on Planning and Priorities and each member of Executive Council is the owner of some type of residential, seasonal, farming, commercial or revenue property and would benefit in some monetary way, regardless of the precise program adopted for the distribution of the $110,000,000.00.

The opinion I provided Minister Atkinson in December, 2004, was to the effect that the anticipated executive and legislative actions of members were not in breach of the provisions of *The Members' Conflict of Interest Act*. Although each member would very likely have his or her private interest advanced by deciding upon the precise tax rebate program and ultimately voting on the program, the provisions of the *Act* would be observed by reason of the exemptions provided by the *Act* to the description of Conflict of Interest set forth in the *Act*.

Section 3 of the *Act* describes a conflict of interest in the following terms:

> "3 For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest, his or her family's private interest or the private interest of an associate.

I observed as follows in my opinion:

> "Although the *Act* does not provide a definition of the words "private interest", it furnishes clear indicators of the intention of the Legislature by describing specific matters that are not included in the interpretation of the words "private interest". Section 2(1)(h) of the *Act* provides as follows:

"2(1) In this Act:

...

(h) **"private interest"** does not include an interest in a decision:

(i) that is of general public application;

(ii) that affects a person as one of a broad class of persons; or

(iii) that concerns the remuneration and benefits of a member or an officer or employee of the Assembly;"

I further opined as follows:

"Many matters will be considered by members during their terms as legislators and/or Executive Council members, the resolution of which will have the effect of furthering the private interest of the member. It is possible that some decisions may adversely affect the private interest of members. If the matter under consideration is of general public application or affects the member as one of a broad class of persons, the member is not disqualified in debating and voting on the matter. If it were otherwise, the day to day business carried out in our parliamentary system would be unduly encumbered. Matters of taxation and fiscal reward are routinely dealt with by our Legislative Assembly and members cannot be prohibited from engaging in the executive and legislative function of government by reason of the prospect that a specific taxation or fiscal measure, intended to cover a broad class of citizens, will impact on the member personally in a positive or negative way. The exclusion set forth in Section 2(1)(h) of the *Act* clearly allows members to carry out their usual responsibilities if the subject matter of the decision falls into the category of an interest "that is of general public application" or "that affects (the member) as one of a broad class of persons"."

Minister Atkinson agreed to the making public of this Opinion.

DESTRUCTION OF FILES OF FORMER MEMBERS

There is no provision in *The Members' Conflict of Interest Act* for the destruction of files of Members when those files are no longer needed by the Commissioner. The files, of course, contain private information of the member, which information is intended only for the eyes of the Commissioner, except that information that is subject to public disclosure pursuant to Section 13(1) of the *Act*.

When a person ceases to be a Member of the Legislative Assembly, I arrange for the destruction of that person's file by means of shredding carried out under my personal supervision.

EXEMPTION GRANTED BY THE COMMISSIONER PURSUANT TO SECTION 34(5) OF *The Members' Conflict of Interest Act*

By reason of the provisions of Section 34 of *The Members' Conflict of Interest Act*, a former Member of Executive Council shall not, among other things, enter into a contract with a Government decision, except for certain exceptions within a 12 month period of ceasing to be a Member of Executive Council.

James W. Melenchuk of Saskatoon, Saskatchewan, wished to enter into an agreement, through a corporation owned by himself, to sell certain real property to St. Paul's Hospital (Grey Nun's) of Saskatoon. The proposed sale did not fall in the exceptions referred to in the previous paragraph but fell into the prohibited type of transaction described by the *Act*.

As Commissioner, I am empowered under the *Act* to exempt this type of contract from the restrictions imposed under the *Act*, if I conclude:

> "34 (5) On the application of a former member of the Executive Council pursuant to subsection (4), the commissioner may exempt the contract or benefit or class of contracts or benefits from the application of subsection (1) if, in the opinion of the commissioner:
>
> (a) the consideration and terms of the contract or benefit are fair and reasonable; and
> (b) it is not contrary to the public interest to exempt the contract or benefit or class of contracts or benefits from the application of subsection (1)."

A request for an exemption was made by Dr. Melenchuk on October 12, 2004, within the 12 month period of his being defeated as a Member in the Saskatchewan General Election of November 5, 2003.

By Order dated October 21, 2004, I granted the exemption requested, after inquiring into the circumstances of the proposed contract of sale. I concluded that the proposed selling price for the property of $985,000.00 was fair and reasonable, as this was the value identified by a private appraisal firm retained by the proposed purchaser. I further concluded that the proposed contract of sale was not contrary to the public interest as the Saskatoon Regional Health Authority desired the property to construct and operate a community Dialysis Centre, directly across the street from the existing St. Paul Hospital.

This action on my part as Commissioner is included in this Report as required by Section 34(8) of the *Act*.

CONVENTIONS AND CONFERENCES

The Canadian Conflict of Interest Network ("CCOIN") is an informal association of Conflict of Interest and Ethics Commissioners serving the various jurisdictions in Canada. I have attended the annual meetings of CCOIN since my appointment, including the annual meeting held at Halifax, Nova Scotia, September 16 to 19, 2004.

These meetings are highlighted by a report from each Provincial and Federal Commissioner in attendance and provide a worthwhile opportunity to exchange views on subjects of mutual interest.

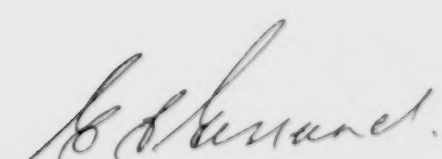
Following the CCOIN convention, I attended a three day symposium on National Ethics convened at Saint Paul University in Ottawa. The symposium included useful discussions on values and ethics in the public sector, the defining of public interest in a modern society and a comparison of ethical norms in Canada and elsewhere.

Budget and Expenditure of the Office of the Commissioner

The budget for the office of the Commissioner for the year 2004 was $122,000.00. This budgetary amount has not changed since my appointment in 2000. The sum of $106,660.19 was actually expended in the operation of the office.

I wish to express my sincere thanks for the generous and pleasant assistance given to me by the staff of the Speaker's Office, the Office of the Clerk of the Legislative Assembly and the Financial Services office. My load has been greatly lightened by the cheerful co-operation I regularly receive from these devoted public servants.

DATED at Regina, Saskatchewan, this 11th day of July, 2005.



G.L. Gerrand, Q.C.
Conflict of Interest Commissioner
for Saskatchewan